

HOUSE No. 2844

By Mr. Travis of Rehoboth, petition of Philip Travis that certain disabled persons be granted a choice of services in the treatment of maladaptive behavior. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE RIGHT TO TREATMENT CHOICES FOR DISABLED PERSONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 123 of the General Laws is hereby amended by
2 inserting after Section 2 the following section:—

3 Section 2A. Individuals with handicapping conditions who are
4 served by public or private treatment facilities shall be afforded
5 choice in the treatment of maladaptive behavior. Handicapped
6 individuals shall be able to choose from those treatments which
7 the facility is clinically capable of providing. The handicapped
8 individual's right to chooseamong alternative treatments shall be
9 subject to the following:—

10 A. Should the individual with a handicapping condition be
11 deemed competent, informed consent shall be obtained for any
12 treatment method;

13 B. Should the individual with a handicapping condition be
14 adjudicated incompetent, treatment shall be authorized as follows:

15 2. In the event that the proposed treatment is not invasive or
16 intrusive such treatment shall be authorized upon the consent of
17 the guardian or, if the handicapped individual is a minor, his par-
18 ents.

19 3. In the event that the proposed treatment is invasive or intru-
20 sive, then such treatment shall be authorized only if the following
21 requirements are met:—

22 a. The handicapped individual has failed to respond sufficiently
23 to non-invasive and non-intrusive treatments, as documented in
24 the record.

25 b. A program is in place to ensure that non-invasive and non-
26 intrusive methods will be employed quickly and systematically to
27 replace the intrusive and invasive procedures, as such replace
28 becomes feasible.

29 c. The invasive or intrusive procedure is:

30 i. Give prior informed consent by the client's parents or
31 guardians;

32 ii. Approved by a physician who finds that the proposed proce-
33 dures are not medically contraindicated;

34 iii. Planned and supervised by a licensed clinician with training
35 and experience in the use of the treatment techniques;

36 iv. Terminated as soon as possible; and

37 v. Approved by a court of competent jurisdiction, utilizing sub-
38 stituted judgment criteria, if required by law.

39 d. The use of the intrusive or invasive treatment procedure is
40 the most effective, least restrictive method to address the handi-
41 capped individual's maladaptive behavior.

42 3. The Departments of Mental Health and Mental Retardation
43 shall promulgate regulations describing those treatment proce-
44 dures which are intrusive or invasive. Intrusive or invasive treat-
45 ment procedures shall include the use of anti-psychotic
46 medication, any other medication with irreversible or life-threat-
47 ening side effects, electroconvulsive therapy, seclusion, restraint,
48 and aversive therapy.